

## § 239.203

every condition on the railroad's property that is likely to affect emergency response is addressed in the plan. Each subsequent amendment to a railroad's emergency preparedness plan shall be filed with FRA by the passenger railroad not less than 60 days prior to the proposed effective date.

(b) *Approval*—(1) *Preliminary review.*

(i) Within 90 days of receipt of each proposed emergency preparedness plan, and within 45 days of receipt of each plan for passenger operations to be commenced after the initial deadline for plan submissions, FRA will conduct a preliminary review of the proposed plan to determine if the elements prescribed in § 239.101 are sufficiently addressed and discussed in the railroad's plan submission. FRA will then notify the primary contact person of each affected railroad in writing of the results of the review, whether the proposed plan has been conditionally approved by FRA, and if not conditionally approved, the specific points in which the plan is deficient.

(ii) If a proposed emergency preparedness plan is not conditionally approved by FRA, the affected railroad or railroads shall amend the proposed plan to correct all deficiencies identified by FRA (and provide FRA with a corrected copy) not later than 30 days following receipt of FRA's written notice that the proposed plan was not conditionally approved.

(2) *Final review.* (i) Within 18 months of receipt of each proposed plan, and within 180 days of receipt of each proposed plan for passenger operations to be commenced after the initial deadline for plan submissions, FRA will conduct a comprehensive review of the conditionally approved plan to evaluate implementation of the elements included. This review will include ongoing dialogues with rail management and labor representatives, and field analysis and verification. FRA will then notify the primary contact person of each affected railroad in writing of the results of the review, whether the conditionally approved plan has been finally approved by FRA, and if not approved, the specific points in which the plan is deficient.

(ii) If an emergency preparedness plan of a railroad or railroads is not fi-

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nally approved by FRA, the affected railroad or railroads shall amend the plan to correct all deficiencies (and provide FRA with a corrected copy) not later than 30 days following receipt of FRA's written notice that the plan was not finally approved.

(3) *Review of amendments.* (i) FRA will review each proposed plan amendment within 45 days of receipt. FRA will then notify the primary contact person of each affected railroad of the results of the review, whether the proposed amendment has been approved by FRA, and if not approved, the specific points in which the proposed amendment is deficient.

(ii) If the amendment is not approved, the railroad shall correct any deficiencies identified by FRA and file the corrected amendment prior to implementing the amendment.

(4) *Reopened review.* Following initial approval of a plan, or amendment, FRA may reopen consideration of the plan, or amendment, for cause stated.

[63 FR 24676, May 4, 1998, as amended at 74 FR 25175, May 27, 2009]

## § 239.203 Retention of emergency preparedness plan.

Each passenger railroad to which this part applies, and all railroads hosting its passenger train service (if applicable), shall each retain one copy of the emergency preparedness plan required by § 239.201 and one copy of each subsequent amendment to that plan at the system and division headquarters of each, and shall make such records available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

## Subpart D—Operational (Efficiency) Tests; Inspection of Records and Recordkeeping

### § 239.301 Operational (efficiency) tests.

(a) Each railroad to which this part applies shall periodically conduct operational (efficiency) tests of its on-board and control center employees to determine the extent of compliance with its emergency preparedness plan.

(b) Each railroad to which this part applies shall maintain a written record

of the date, time, place, and result of each operational (efficiency) test that was performed in accordance with paragraph (a) of this section. Each record shall also specify the name of the railroad officer who administered the test, the name of each employee tested, and sufficient information to identify the relevant facts relied on for evaluation purposes.

(c) Each record required by paragraph (a) of this section shall be retained at the system headquarters of the railroad and at the division headquarters for the division where the test was conducted for one calendar year after the end of the calendar year to which the test relates. Each such record shall be made available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

### § 239.303 Electronic recordkeeping.

Each railroad to which this part applies is authorized to retain by electronic recordkeeping the information prescribed in § 239.301, provided that all of the following conditions are met:

(a) The railroad adequately limits and controls accessibility to such information retained in its database system and identifies those individuals who have such access;

(b) The railroad has a terminal at the system headquarters and at each division headquarters;

(c) Each such terminal has a desk-top computer (*i.e.*, monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by representatives of FRA and States participating under part 212 of this chapter;

(d) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and

(e) The railroad provides representatives of FRA and States participating under part 212 of this chapter with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

## APPENDIX A TO PART 239—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>

Section	Violation	Willful violation
Subpart B—Specific Requirements:		
239.101(a) Failure of a railroad to adopt a written emergency preparedness plan .....	\$7,500	\$11,000
(a)(1) Failure of the plan to provide for:		
(i) Initial or on-board notifications by an on-board crewmember .....	2,500	5,000
(ii) Notification of outside emergency responders by control center .....	2,500	5,000
(a)(2) Failure of the plan to provide for:		
(i) Initial or periodic training of on-board personnel .....	2,500	5,000
(ii) Initial or periodic training of control center personnel .....	2,500	5,000
(iii) Completion of initial training of all on-board and control center personnel by the specified date .....	2,500	5,000
(iv) Completion of initial training of all newly hired on-board and control center personnel by the specified date .....	2,500	5,000
(v) Adequate procedures to evaluate and test on-board and control center personnel for qualification under the emergency preparedness plan .....	2,500	5,000
(vi) Adequate on-board staffing .....	2,500	5,000
(a)(3) Failure of a host railroad involved in joint operations to coordinate applicable portions of the emergency preparedness plan with the railroad or railroads providing or operating a passenger train service operation .....	3,000	6,000
(a)(4) Failure of the plan to address:		
(i) Readiness procedures for emergencies in tunnels .....	2,500	5,000
(ii) Readiness procedures for emergencies on an elevated structure or in electrified territory .....	2,500	5,000
(iii) Coordination efforts involving adjacent rail modes of transportation .....	2,500	5,000
(a)(5) Failure of the plan to address relationships with on-line emergency responders by providing for:		
(i) The development and availability of training programs .....	3,000	6,000
(ii) Invitations to emergency responders to participate in emergency simulations .....	3,000	6,000
(iii) Distribution of applicable portions of the current emergency preparedness plan .....	3,000	6,000